

(7)
8/15/01
MPT

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BARBARA A. WILHELM,

CIVIL NO. 1:CV-01-1057

Plaintiff

v.

**COMMONWEALTH OF
PENNSYLVANIA; PENNSYLVANIA
STATE POLICE; COL. PAUL J.
EVANKO, COMMISSIONER;
LT. COL. THOMAS K. COURY;
and CPT. MICHAEL D. SIMMERS,**

Defendants

**FILED
HARRISBURG, PA**

AUG 15 2001

**MARY E. D'ANDREA, CLERK
Per MPT
Deputy Clerk**

ORDER

The background for this order is as follows: On June 14, 2001 Plaintiff filed a complaint in the instant action. Plaintiff served Defendants on July 20, 2001. On August 13, 2001, Plaintiff filed a motion for judgment on the pleadings, based solely on Defendant's failure to respond to the complaint within twenty days of service. However, also on August 13, 2001, Defendants filed a request for an extension of time to respond to the complaint. In an order dated August 15, 2001, the court granted Defendant's motion for an extension.

"[A] motion on the pleadings under Rule 12 (c) . . . is not the correct procedural remedy if a defendant has failed to file an answer." *General Motors Corp. v. Blevins*, 144 F. Supp. 381 (D. Colo. 1956). Rather, Plaintiff's proper procedural remedy is default. Thus, the instant motion is inappropriate.

The court, however, construes Plaintiff's motion as a motion for entry of default under Rule 55 (a). Because Defendants were served on July 20, 2001, they were required to respond by Thursday August 9, 2001. See Fed. R. Civ. Pro. 12

(a)(1)(A). Defendants filed their request for extension on Monday August 13, 2001, only two days late. The Third Circuit has repeatedly emphasized that it does not favor defaults. In a close call all doubts should be resolved in favor of obtaining a decision on the merits. *Zawadaski De Bueno v. Bueno Castro*, 822 F.2d 416, 420 (3d Cir. 1987); *Farnese v. Bagnasco*, 687 F.2d 761, 764 (3d Cir. 1984); *see also Hritz v. Woma Corp.*, 732 F.2d 1178, 1181 (3d Cir. 1982)(gathering cases). The court, therefore, will not allow such a *de minimis* delay to be outcome determinative.

In accordance with the foregoing, **IT IS HEREBY ORDERED THAT** Plaintiff's motion for judgment on the pleadings is **DENIED**.


Sylvia H. Rambo
United States District Judge

Dated: August 15, 2001.

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

August 15, 2001

Re: 1:01-cv-01057 Wilhelm v. Commonwealth of PA

True and correct copies of the attached were mailed by the clerk to the following:

Nathan C. Pringle Jr., Esq.
3601 N. Progress Avenue
Suite 200
Harrisburg, PA 17110

Susan J. Forney, Esq.
Office of Attorney General
Strawberry Square
15th Floor
Harrisburg, PA 17120

CC:			
Judge	(X)	()	Pro Se Law Clerk
Magistrate Judge	()	()	INS
U.S. Marshal	()	()	Jury Clerk
Probation	()		
U.S. Attorney	()		
Atty. for Deft.	()		
Defendant	()		
Warden	()		
Bureau of Prisons	()		
Ct Reporter	()		
Ctroom Deputy	()		
Orig-Security	()		
Federal Public Defender	()		
Summons Issued	()	with N/C attached to complt. and served by: U.S. Marshal () Pltf's Attorney ()	
Standard Order 93-5	()		
Order to Show Cause	()	with Petition attached & mailed certified mail to: US Atty Gen () PA Atty Gen () DA of County () Respondents ()	
Bankruptcy Court	()		
Other _____	()		

MARY E. D'ANDREA, Clerk

DATE: August 15th, 2001

Mark J. Hornbeck
Deputy Clerk